

The complaint

Mr F and Mrs G complain that Marshmallow Insurance Limited failed to fully investigate their motor insurance claim.

Marshmallow has been represented by its agents during the claim. All references to Marshmallow include its agents.

What happened

In August 2023 Mr F and Mrs G made a claim after Mr F was involved in an accident while driving. Mr F and Mrs G were initially referred to an accident management company (W) on a credit hire and repair basis. After W concluded their involvement, Mr F and Mrs G were passed to Marshmallow to claim on their own motor insurance policy.

Mr F and Mrs G said the third-party was exiting the roundabout from the third, innermost lane and crashed into their vehicle. Mr F and Mrs G said the third-party was the primary cause of the accident. They complained to Marshmallow about its handling of the claim and the service it had provided.

In October 2023, Marshmallow issued a complaint response. It said that it was in the process of obtaining evidence to dispute liability and that it had made an interim payment, without prejudice, to the third-party. Marshmallow has since confirmed that it accepted liability in full in September 2023.

Mr F and Mrs G were unhappy with Marshmallow's response, so referred their complaint to the Financial Ombudsman Service. They said Marshmallow didn't attempt to obtain the CCTV when it would have been available, and wrongfully found them to be at fault. They said they'd been left in the dark about key developments in the claim. Mr F and Mrs G said Marshmallow's actions impacted their no claims discount and premiums and caused them distress. They'd like Marshmallow to explain what evidence it relied on to determine fault or otherwise amend the fault record.

Our Investigator considered the complaint. He said that Marshmallow had provided inconsistent messages, but that even if CCTV had been requested earlier, there was no guarantee that footage would have been available or that it would have changed the liability decision. Our Investigator did recommend Marshmallow pay £250 compensation to recognise the poor service it had provided, including the mixed messages.

Marshmallow didn't respond to the outcome. Mr F and Mrs G didn't accept the outcome. They said Marshmallow had failed to act in their best interests by admitting liability without thoroughly investigating the matter. This was because Marshmallow had not obtained CCTV or the police report despite their insistence. They felt Marshmallow had reached its decision without sufficient evidence and therefore prejudiced their position, including their personal injury claim.

As the complaint wasn't resolved, it was passed to me to decide. The Investigator had also explained why Marshmallow didn't need to provide a courtesy car under the terms. Mr F and

Mrs G didn't respond any further on that point, so I've not considered it within my decision.

Mr F and Mrs G also raised concerns about the actions of W. W provided services to them under credit hire, and I understand W was also helping them with an injury claim. W is not a party to this complaint. So I'm unable to consider their actions in this decision. Mr F and Mrs G have said they were in the process of raising a complaint against W directly and they'll need to do this if they wish to pursue that complaint further.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

A number of matters and points have been raised, within Mr F and Mrs G's complaint form, Mrs G's response to the last view and the 'next steps' she outlined. This decision focuses on what I think are the key issues. However, I've carefully considered all of the submissions made before arriving at my decision.

I should first set out that the Financial Ombudsman Service is a dispute resolution service, not the regulator of the insurance industry. So it's not our role to fine and punish a business. Our role is to look at whether a business has acted fairly in the circumstances of the complaint and decide what it needs to do where we decide it hasn't.

Mr F and Mrs G say they didn't cause the accident and are unhappy Marshmallow found Mr F to be at fault for it. I should explain that this service isn't able to say who's at fault for causing an accident – that is the responsibility of the courts. Our role is to look at whether Marshmallow has carried out a fair investigation, reviewed all the evidence it has and come to a reasonable conclusion.

A fault claim is generally considered to be one where the insurer hasn't been able to recover claim costs from a third-party. Marshmallow did initially try to hold the third-party fully responsible, but later decided that it didn't have a strong enough case to do so.

I've not seen the actual policy terms, as Marshmallow has provided later versions. But it's likely, based on the versions I have seen, and my experience, that the terms applicable at the time, like most other motor insurance policies, allow Marshmallow full discretion in the settlement of any claim. So Marshmallow was entitled to settle the claim on the best terms it thinks fit. And it had the ultimate and final say on how to settle a claim. But it needed to exercise this right fairly and reasonably.

Mr F and Mrs G feel that Marshmallow didn't thoroughly investigate the circumstances of the accident. They've said Marshmallow failed to obtain CCTV footage and the police report, which they feel would show the third-party was responsible for the accident.

Marshmallow has accepted it admitted liability too early, and at a stage where it was still in the process of obtaining evidence such as CCTV. I consider that, by not trying to obtain CCTV, it failed to undertake a reasonable investigation. Footage might have helped to identify what happened and strengthened any case for recovery of costs from the third-party.

I'm satisfied that Marshmallow did make a reasonable attempt to obtain the police report. But, for reasons outside Marshmallows control, such as it being given a reference the police didn't recognise, it was unable to obtain this. In any case, I have seen evidence of communication from the police confirming that they'd considered the circumstances, and no further action would be taken against any of the parties involved. I therefore don't consider it likely that the police report, if obtained, would have provided evidence to support the third-

party being liable for the accident.

Turning to the CCTV, I agree with Mr F and Mrs G that Marshmallow should have tried at the outset to obtain any available CCTV. But, in order to require Marshmallow to make up for any financial loss caused by the fault record, I'd need to be persuaded that had Marshmallow sought the footage, it would most likely have resulted in a successful recovery of claim costs from the third-party. While I accept it's possible that might have happened, I'm not persuaded that it most likely would.

Cameras in the area may not have been operational. They may not have been focused on the incident location at the relevant time. Any available footage may also not have supported Mr F and Mrs G's position that the third-party was entirely at fault. So I can't fairly say that if Marshmallow had sought the CCTV footage, the outcome of the claim would most likely have been different. And even if the claim had been settled on split liability basis, the outcome for Mr F and Mrs G, and the impact on them, would have been similar. This is because it would still have meant the claim was treated as a fault claim.

In addition, considering the time since the incident, it's unlikely any footage is still available. So I'm not going to require Marshmallow to request it now.

Marshmallow has relied on the information provided by Mr F and Mrs G, along with the allegations from the third-party, in reaching its liability decision. This indicates that the third-party was already on the roundabout when Mr F entered it. I consider Marshmallow's conclusion to be reasonable based on that information. While I agree that it should have tried to obtain CCTV, I've explained above why I won't require Marshmallow to make up for any financial loss caused by the fault record.

Marshmallow's failure to obtain the footage, despite Mr F and Mrs G's insistence from the outset, has caused them distress and frustration. This has been compounded by Marshmallow's failure to keep them properly updated and by Marshmallow's mixed messages about the status of the claim. The Investigator recommended it pay £250 compensation in recognition of this. I agree that's a fair amount, so I will require Marshmallow to pay it.

I understand that the settlement of Mr F and Mrs G's total loss claim remains outstanding. Mr F and Mrs G told Marshmallow they didn't wish to proceed with this until their complaint was concluded. Until the settlement is resolved, their claim will remain open, so Mr F and Mrs G may wish to contact Marshmallow to progress the settlement, if they haven't already done so.

My final decision

For the reasons given above, I require Marshmallow Insurance Limited to pay Mr F and Mrs G £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs G to accept or reject my decision before 11 October 2024.

Monjur Alam
Ombudsman